

## **§ 785.1**

AUTHORITY: 52 Stat. 1060; 29 U.S.C. 201-219; 29 U.S.C. 254. Pub. L. 104-188, 100 Stat. 1755.

SOURCE: 26 FR 190, Jan. 11, 1961, unless otherwise noted.

### **Subpart A—General Considerations**

#### **§ 785.1 Introductory statement.**

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) requires that each employee, not specifically exempted, who is engaged in commerce, or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce, or in the production of goods for commerce receive a specified minimum wage. Section 7 of the Act (29 U.S.C. 207) provides that persons may not be employed for more than a stated number of hours a week without receiving at least one and one-half times their regular rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours worked. This part discusses the principles involved in determining what constitutes working time. It also seeks to apply these principles to situations that frequently arise. It cannot include every possible situation. No inference should be drawn from the fact that a subject or an illustration is omitted. If doubt arises inquiries should be sent to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any area or Regional Office of the Division.

[35 FR 15289, Oct. 1, 1970]

#### **§ 785.2 Decisions on interpretations; use of interpretations.**

The ultimate decisions on interpretations of the act are made by the courts. The Administrator must determine in the first instance the positions he will take in the enforcement of the Act. The regulations in this part seek to inform the public of such positions. It should thus provide a "practical guide for employers and employees as to how the office representing the public interest in its enforcement will seek to apply it." (*Skidmore v. Swift*, 323 U.S. 134, 138 (1944).)

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#### **§ 785.3 Period of effectiveness of interpretations.**

These interpretations will remain in effect until they are rescinded, modified or withdrawn. This will be done when and if the Administrator concludes upon reexamination, or in the light of judicial decision, that a particular interpretation, ruling or enforcement policy is incorrect or unwarranted. All other rulings, interpretations or enforcement policies inconsistent with any portion of this part are superseded by it. The Portal-to-Portal Bulletin (part 790 of this chapter) is still in effect except insofar as it may not be consistent with any portion hereof. The applicable statutory provisions are set forth in § 785.50.

#### **§ 785.4 Application to Walsh-Healey Public Contracts Act.**

The principles set forth in this part are also followed by the Administrator of the Wage and Hour Division in determining hours worked by employees performing work subject to the provisions of the Walsh-Healey Public Contracts Act.

[35 FR 15289, Oct. 1, 1970]

### **Subpart B—Principles for Determination of Hours Worked**

#### **§ 785.5 General requirements of sections 6 and 7 of the Fair Labor Standards Act.**

Section 6 requires the payment of a minimum wage by an employer to his employees who are subject to the Act. Section 7 prohibits their employment for more than a specified number of hours per week without proper overtime compensation.

[26 FR 7732, Aug. 18, 1961]

#### **§ 785.6 Definition of "employ" and partial definition of "hours worked".**

By statutory definition the term "employ" includes (section 3(g)) "to suffer or permit to work." The act, however, contains no definition of "work". Section 3(o) of the Fair Labor Standards Act contains a partial definition of "hours worked" in the form of a limited exception for clothes-changing and wash-up time.